



Program Statement

OPI: OGC
NUMBER: 1380.06
DATE: 2/10/98
SUBJECT: Disclosing Potential
Impeachment Information
Regarding Employees

1. PURPOSE AND SCOPE. To implement procedures for disclosure of potential impeachment information to the U.S. Attorney Offices and Department of Justice litigating sections that prosecute criminal cases and to:

- # ensure prosecutors receive sufficient information to meet their obligations under *Giglio v. United States*, 405 U.S. 150 (1972), and
- # protect the privacy interests of current and former Bureau employees.

This Program Statement implements the Attorney General's Policy Regarding the Disclosure to Prosecutors of Potential Impeachment Information Concerning Law Enforcement Agency Witnesses ("Giglio Policy") dated December 9, 1996. In *Giglio*, the Supreme Court held that the failure to disclose material evidence regarding the credibility of a witness is a violation of due process and therefore requires a new trial.

This Program Statement also emphasizes the obligation of individual employees to inform prosecuting attorneys of potential impeachment information prior to providing a sworn statement or testimony in any criminal investigation or case. In most investigations and cases, it is expected that the prosecuting attorney will be able to obtain all potential impeachment information directly from employee affiants or witnesses during the normal course of investigations or preparation for hearings or trials; however, a prosecutor may also request such information from the Bureau.

2. PROGRAM OBJECTIVES. The expected results of this program are:

a. Prosecuting attorneys will be informed by employees of potential impeachment information prior to providing a sworn statement or testimony in any criminal investigation or case.

b. When a prosecutor or Department of Justice litigator formally requests potential impeachment information on an employee, that information will be disclosed by the Bureau consistently and lawfully.

3. DIRECTIVES REFERENCED

PS 3000.02	Human Resources Management Manual (11/1/93)
PS 3420.08	Standards of Employee Conduct (3/7/96)

4. STANDARDS REFERENCED. None.

5. IMPEACHMENT INFORMATION. While the exact parameters of potential impeachment information are not easily determined, it is generally defined as impeaching information which is material to the defense, including but not limited to:

- # specific instances of the witness's conduct that may be used to attack the witness's credibility or character for truthfulness,
- # evidence in the form of opinion or reputation as to the witness's character for truthfulness,
- # prior inconsistent statements, and
- # information that may be used to suggest that a witness is biased.

6. EMPLOYEE OBLIGATION TO DISCLOSE POTENTIAL IMPEACHMENT INFORMATION. As early as possible prior to providing a sworn statement or testimony in any criminal investigation or case, each Bureau employee shall inform the prosecutors of:

- # any potential impeachment information, including but not limited to, any disciplinary action which was sustained pertaining to truthfulness or possible bias, and
- # any prior experiences as a witness or affiant in a criminal case.

A prosecutor may decide to also request potential impeachment information from the Bureau.

7. REQUEST FOR INFORMATION FROM THE BUREAU. An official in a prosecutor's office may request potential impeachment information from the Bureau by contacting:

- # The Associate General Counsel for Criminal Litigation in the Central Office for prosecutions filed in the District of Columbia, or
- # The respective Regional Counsel for prosecutions in other districts.

The Bureau's contact person shall:

- # serve as the main point of contact concerning potential impeachment information regarding an employee,
- # comply with case law and practice governing the definition and disclosure of impeachment information, and
- # consult as needed with the prosecutor's office to verify changes in case law or practice.

8. BUREAU REVIEW AND DISCLOSURE. Once a request for potential impeachment information regarding an employee is received, in accordance with this policy, the Bureau contact person shall authorize the review of all files regarding the identified employee, including, but not limited to:

- # the employee's Official Personnel File,
- # any Office of Internal Affairs (OIA) file regarding the employee,
- # any Special Investigative Supervisor file regarding the employee, and
- # a National Crime Information Center (NCIC) background check.

The Bureau contact person shall use the format in Attachment A to request information from the OIA which shall forward any potential impeachment information to the contact person. The contact person may delegate to institution legal staff the responsibility of reviewing all files maintained at the institution and conducting an NCIC background check.

When institution legal staff begin to prepare an employee to testify as a witness or affiant, they shall ask the employee whether he or she is aware of any potential impeachment information.

Within 15 calendar days of the request (or earlier to meet a court-imposed deadline), the contact person, using the format in Attachment B and/or C, shall advise the requesting official of:

- # any finding of misconduct that reflects upon the truthfulness or possible bias of the employee, including a finding of lack of candor during an administrative inquiry,
- # any past or pending criminal charge brought against the employee, and
- # any credible allegation of misconduct that reflects upon the truthfulness or possible bias of the employee that is the subject of a pending investigation.

When a decision is made to disclose any potential impeachment information, the contact person shall ensure the employee is advised of the disclosure.

9. ALLEGATIONS THAT ARE UNSUBSTANTIATED OR NOT CREDIBLE, OR HAVE RESULTED IN EXONERATION. Generally, allegations that cannot be substantiated or are not credible, or have resulted in the exoneration of an employee, are not considered potential impeachment information. Nonetheless, upon request the contact person shall provide to the requesting official such information that reflects upon the truthfulness or bias of the employee in the following circumstances:

- # the requesting official advises the contact person that it is required by a Court decision in the district where the investigation or case is being pursued;
- # on or after December 9, 1996, the effective date of the Attorney General's policy:
 - # the allegation was made by a federal prosecutor, judge, or magistrate judge;
 - # the allegation received publicity;
 - # the requesting official and the Bureau contact person agree that such disclosure is appropriate, based upon exceptional circumstances of the case or the role of the witness; or
 - # disclosure is otherwise deemed appropriate by the Bureau contact person.

When there is a question of whether information may be used for impeachment purposes, the contact person shall provide the information. The contact person shall advise the requesting official, to the extent determined, whether any aforementioned allegation is unsubstantiated or not credible, or resulted in exoneration.

10. RECORDS. To ensure that special care is taken to protect the privacy interests and confidentiality of employees, the Bureau contact person shall request that the requesting official expeditiously return all information and documentation that was not disclosed to the defense counsel. Prosecuting offices are permitted, however, to keep motions, court orders, and supporting documents in the criminal case file.

The contact person shall maintain:

- # potential impeachment information that was disclosed to a Court or defense counsel, along with any judicial rulings and related pleadings, and

- # judicial rulings and related pleadings on information that was disclosed to the Court but not to the defense in a manner that allows expeditious access upon a request from the requesting official.

11. CONTINUING DUTY TO DISCLOSE. Once a request for potential impeachment information has been made, the contact person shall advise the requesting official of any additional potential impeachment information that arises after the request and during the pendency of the specific criminal case or investigation.

Therefore, Bureau components that have been requested to verify whether there is impeachment information regarding an employee must promptly notify the contact person of any additional potential impeachment information that arises after the initial request.

Six months after a request for potential impeachment information is received, the contact person shall inquire of the requesting official whether the specific criminal case or investigation has concluded in a judgment or declination. If the criminal case or investigation has concluded in a judgment or declination, the contact person's duty to disclose shall cease at that time.

12. NOTIFICATION OF TRANSFER, REASSIGNMENT, OR RETIREMENT OF EMPLOYEE. The contact person shall notify the requesting official when an employee has retired, been transferred to an office in another judicial district, or been reassigned to a position in which the employee will be neither an affiant nor witness. Thus, subsequent to the resolution of any litigation pending in the prosecuting office in which the employee could be an affiant or witness, this notice will assist the requesting official in removing from the prosecuting office's system of records any record that can be accessed by the identity of the employee.

/s/
Kathleen M. Hawk
Director

[Date]

MEMORANDUM FOR THE CHIEF, OFFICE OF INTERNAL AFFAIRS

FROM: [Name of BOP Contact Person], Regional Counsel/
Associate General Counsel for Criminal Litigation

SUBJECT: *Giglio* Request

My office has received a *Giglio* request from [name, title, and office of Requesting Official]. In order to comply with this request, please provide me with any information your office may have regarding the following Federal Bureau of Prisons employee(s).

[list full name of employee(s) and current duty station]

If your office has no information regarding the above referenced employee(s), please notify accordingly. Your immediate attention to this matter is appreciated. If you have any questions please contact me at [telephone number].

[Date]
[Requesting Official's name and address]

Re: [Case name]
[Case number]

Giglio Request Response

Dear Mr./Ms.

This letter is in response to your *Giglio* request for potential impeachment information regarding the Federal Bureau of Prisons employee(s) who may be requested to be a witness or affiant in the above referenced matter. Pursuant to your request, the Office of Regional Counsel [Associate General Counsel for Criminal Prosecution] has caused a review of agency files for evidence of perjurious conduct, acts of dishonesty, or otherwise potentially impeachable information.

A review of agency files for the Federal Bureau of Prisons employee(s) listed below revealed no pertinent information:

[List full name of employee and current duty station]

Please arrange to serve a trial notice or subpoena on staff who are listed as a potential witness or affiant in your letter. For the travel authorization to be processed and staffing coverage to be arranged, it is imperative that staff receive written notification of the trial date. Please contact [institution legal staff] at [telephone number] to confirm the trial date and witness/affiant arrangements. Please copy this office with your final witness list prior to the trial date so that we can arrange travel authorizations.

If you have any questions regarding this information or if we can be of any further assistance, please do not hesitate to call my office at [telephone number].

Sincerely,

[Name of BOP Contact Person]
Regional Counsel [or Associate General Counsel for Criminal
Litigation]

[Date]
[Requesting Official's name and address]

Re: [Case name]
[Case number]

Giglio Request Response

Dear Mr./Ms.

This letter is in response to your *Giglio* request for potential impeachment information regarding the Federal Bureau of Prisons employee(s) who may be requested to be a witness or affiant in the above referenced matter. Pursuant to your request, the Office of Regional Counsel [Associate General Counsel for Criminal Prosecution] has caused a review of agency files for evidence of perjurious conduct, acts of dishonesty, or otherwise potentially impeachable information.

A review of agency files for the Federal Bureau of Prisons employee(s) listed below revealed the following allegation:

[List full name of employee and current duty station]

Description of information:

Recommendation for disclosure based upon whether the allegation is unsubstantiated, not credible, or resulted in the employee's exoneration:

Please arrange to serve a trial notice or subpoena on staff who are listed as a potential witness or affiant in your letter. For the travel authorization to be processed and staffing coverage to be arranged, it is imperative that staff receive written notification of the trial date. Please contact [institution legal staff] at [telephone number] to confirm the trial date and witness/affiant arrangements. Please copy this office with your final witness list prior to the trial date so that we can arrange travel authorizations. Finally, in order to protect the privacy interests of employees, I request that you expeditiously return all information that was not disclosed to the defense counsel.

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If you have any questions regarding this information or if we can be of any further assistance, please do not hesitate to call my office at [telephone number].

Sincerely,

[Name of BOP Contact Person]
Regional Counsel [or Associate General Counsel for Criminal
Litigation]